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June 19, 1980

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Secretary INTERSTATE COMMERCE COMMISSION
Interstate Commerce Commission
Washington, D.C. 20423

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RECORDATION NO. 11917 Filed 1425

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INTERSTATE COMMERCE COMMISSION

RECEIVED
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I.C.C. BR.
FREE OPERATING

Dear Madam:

Enclosed please find six fully executed copies of the following documents between the parties listed below relating to certain railroad rolling stock as described herein:

I. Document: Conditional Sale Agreement, dated as of May 30, 1980.

A. Parties: Vendor:

Whittaker Corporation
Berwick Forge & Fabricating
Division

Vendee:

Operating Lease Services, Inc.

B. Addresses: Vendor:

Whittaker Corporation
Berwick Forge & Fabricating
Division
West Ninth Street
P.O. Box 188
Berwick, Pennsylvania 18603

Vendee:

Operating Lease Services, Inc.
c/o Gollust & Tierney, Inc.
30 Rockefeller Plaza, Suite 4510
New York, New York 10020

C. Equipment: Thirty-five (35) 100 ton, 50 foot 6 inch boxcars with AAR mechanical designation "XP" and bearing road numbers NN 201-235.

II. Document: Lease Agreement

A. Parties: Lessor:

Operating Lease Services, Inc.

Lessee:

Nevada Northern Railway Co.

Scott B. White
C. Dunlap

Secretary
June 19, 1980
Page Two

B. Addresses: Lessor: Operating Lease Services, Inc.
c/o Gollust & Tierney, Inc.
30 Rockefeller Plaza, Suite 4510
New York, New York 10020

Lessee: Nevada Northern Railway Co.
P.O. Box 16600
Salt Lake City, Utah 84116

C. Equipment: Same as in I.C above.

I respectfully request that the original of this document be recorded under the provisions of 49 U.S.C. §11303. I would also appreciate your stamping the additional copies of the above documents which are not required for your filing purposes and returning them to me. A check in the amount of \$100.00 is enclosed to cover the filing fees.

The undersigned certifies that he is acting as counsel to Operating Lease Services, Inc. and that he has knowledge of the matters set forth in the above described documents.

Sincerely yours,



Scott B. White

Enclosures

11917-X
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INTERSTATE COMMERCE COMMISSION

LEASE AGREEMENT

BETWEEN

OPERATING LEASE SERVICES, INC.,
AS LESSOR

AND

NEVADA NORTHERN RAILWAY COMPANY,
AS LESSEE

DATED AS OF MAY 30, 1980

(COVERING UP TO 35 100-TON STEEL XP BOXCARS)

Filed and recorded with the Interstate Commerce Commission
pursuant to 49 U.S.C. 113-3 (formerly Section 20c of the
Interstate Commerce Act) on _____, 1980 at
_____, Recordation No. _____

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*This Index is included for convenience only and does not form a part of, or affect any construction or interpretation of this Agreement.

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LEASE AGREEMENT (hereinafter called the "Agreement") dated as of May 30, 1980, between OPERATING LEASE SERVICES, INC., a Connecticut corporation (hereinafter called the "Owner"), as Lessor, and NEVADA NORTHERN RAILWAY COMPANY, a Maine corporation (hereinafter called the "Railroad"), as Lessee.

WHEREAS, the Owner is negotiating with Whittaker Corporation (Berwick Forge and Fabricating Division) (hereinafter called the "Builder"), for a Purchase Agreement (hereinafter called the "Purchase Agreement") to be entered into between the Builder and either the Owner or certain other parties (hereinafter called "Purchasers") designated by the Owner pursuant to which Purchase Agreement the Builder will construct, sell and deliver certain Units of railroad equipment described in Schedule A hereto (hereinafter individually called a "Unit" and collectively, the "Units" or the "Equipment"); and

WHEREAS, the Owner intends to enter into a Management Agreement (hereinafter called the "Management Agreement") with any Purchasers pursuant to which the Owner will be engaged to accept delivery of the Units from the Builder, and in its own name or in the name of such Purchasers, manage the Units on behalf of such Purchasers, such management to include leasing the Units pursuant hereto and collecting and receiving all rental therefrom; and

WHEREAS, the Railroad desires to lease all of the Units or such lesser number as are delivered to and accepted by the Owner prior to July 31, 1980, at the rental, for the term and upon the conditions hereinafter provided.

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and of the covenants hereinafter mentioned to be kept and performed by the parties, the Owner hereby leases the Units to the Railroad and the Railroad hereby hires the Units from the Owner, upon the following terms and conditions, but subject and subordinate to the rights of any secured party to which the Owner (or the Purchasers, if any) may grant a security interest in any of the Units.

1. Delivery and Acceptance of Units.

1.1 The Railroad shall review the specifications and warranty for the Equipment referred to or set forth in the Purchase Agreement (hereinafter called the "Specifications") and shall confirm in writing to the Owner prior to construction of any Units that the Units, if built to such Specifications, will be acceptable to the Railroad under this Agreement.

1.2 Upon completion of construction of each Unit, the Owner will cause its authorized representative to inspect each Unit at Renova, Pennsylvania, (the point at which each Unit is delivered by the Builder) and, if each such Unit is found to

conform to the Specifications for the Units, to accept delivery of each such Unit and deliver to the Railroad (and to the Builder) a certificate of acceptance (hereinafter called a "Certificate of Acceptance") substantially in the form of Exhibit A hereto, stating that each such Unit has been delivered, inspected and accepted by the Owner on the date of such Certificate (such date being hereinafter called a "Delivery Date") and is marked in accordance with Section 8 hereof; provided, however, the Railroad may (but shall not be required to) have its own employee inspect any Unit at Renova, Pennsylvania, and if such employee finds such Unit not to conform to the Specifications and so notifies the authorized representative of the Owner prior to acceptance thereof, the authorized representative of the Owner shall not accept delivery of such Unit from the Builder. Upon execution of a Certificate of Acceptance with respect to any Unit, such Unit shall be deemed for the purposes of this Agreement to have been delivered to and accepted by the Railroad and shall be subject thereafter to all the terms and conditions of this Agreement, notwithstanding that the Railroad may not have immediate physical possession of such Unit.

1.3 The Owner will pay on behalf of the Railroad all out-of-pocket transportation costs, expenses, fees and charges incurred by the Railroad in connection with transporting each Unit from Renova, Pennsylvania (the point at which they are delivered and accepted from the Builder) to the point where each Unit first is loaded with freight and placed in revenue producing service; provided, however, the Railroad shall reimburse the Owner (or itself pay) all amounts of such transportation costs, expenses, fees and charges in excess of the amount which would be (or is) incurred to transport the Units from Renova, Pennsylvania to a rail interchange point at Chicago, Illinois.

2. Term.

2.1 The initial term of this Agreement (hereinafter called the "Initial Term") as to each Unit shall begin on the Delivery Date of such Unit and shall terminate with respect to all Units on July 31, 1995; provided, however, that in the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged, or permanently rendered unfit for use from any loss whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of use of such Unit by the Railroad as contemplated hereunder for a term of 60 consecutive days (such occurrences being hereinafter called "Casualty Occurrences"), then the term of this Agreement as to such Unit shall terminate upon receipt by the Owner of the insurance, condemnation or other final payment with respect to such Unit or upon written advice from the Railroad or any insurance carrier that no payment is due the Owner as a result of such Casualty Occurrence.

2.2 This Agreement shall automatically be extended for successive periods of twelve (12) months each (hereinafter called an "Extended Term") with respect to all Units not suffering a Casualty Occurrence unless the Owner or the Railroad shall give written notice to the other not less than six (6) months prior to the end of the Initial Term or any Extended Term of its intention to terminate this Agreement as to some or all of the Units, in which case this Agreement shall terminate as to those Units for which notice is so given on the last day of the Initial Term or the Extended Term set forth in such notice.

2.3 The obligations of (i) the Railroad to pay the rental and all other amounts payable by the Railroad hereunder, and (ii) the Owner to reimburse the Railroad for maintenance expenses, taxes and all other amounts herein required to be reimbursed by the Owner shall survive the expiration of the Initial Term or any Extended Term of this Agreement.

3. Use of Equipment.

3.1 The Railroad shall use its best efforts to cause the Units to be loaded and placed into revenue producing interline interchange service (in the continental United States) in accordance with ICC and AAR Interchange Rules and Agreements as soon as practicable after their respective Delivery Dates and shall cause the Equipment to continue to be used in such revenue producing interline interchange service throughout the term of this Agreement.

4. Utilization of the Units; Minimum Utilization; and Preference for Outbound Loadings.

4.1 For the purposes of this Agreement, the terms "Utilization of the Units" and "Minimum Utilization" shall have the following meanings:

"Utilization of the Units" for any period shall be that fraction, expressed as a percentage, the denominator of which is the hypothetical sum of all rental which would be received by the Owner pursuant to Paragraph 6.1 hereof with respect to such period if all Units (i) traveled 115 miles per day of such period on lines of railroads other than the Railroad and (ii) earned Per Diem (as hereinafter defined), Incentive Per Diem (as hereinafter defined) if applicable, and mileage charge revenues at the full rates prevailing during such period for railroad boxcars of the same classification as the Boxcars, and the numerator of which is the sum of all

rental actually received or receivable by the Owner pursuant to Paragraph 6.1 hereof with respect to such period. Each Unit shall be included in the determination of Utilization of the Units for each day of the period for which Utilization of the Units is being determined that such Unit is subject to this Agreement. (By way of example of the foregoing and not in limitation thereof, Exhibit B is attached hereto and incorporated herein by this reference thereto for the purpose of illustrating the calculation of Utilization of the Units.)

"Minimum Utilization" for any period, subject to adjustment in accordance with Paragraph 6.2 hereof, shall be Eighty-Four Percent (84%).

4.2 Whenever any Units are on the tracks of the Railroad during the term of this Agreement, the Railroad shall give absolute preference to the Units for railroad boxcar loadings on its tracks with shipments destined for locations off the tracks of the Railroad (such shipments being hereinafter called "Outbound Loadings") for which the Units are eligible over all other similar railroad equipment owned, leased, managed, interchanged or otherwise obtained by the Railroad. In order to maximize the rate of Utilization of the Units during the term of this Agreement and in the event that the placement of the Units into assigned service contemplated in Paragraph 15.2 hereof should be terminated for any reason, the Railroad shall use its best efforts to arrange and give absolute preference to the Units over all other similar railroad equipment (whether owned, leased, managed, interchanged, or otherwise obtained by the Railroad) for placement into assigned service with any freight shipper and/or railroad having need for such railroad equipment and seeking to enter into an agreement for assigned service of similar railroad equipment with the Railroad, but the Units shall be placed in such assigned service only upon the prior written approval of the Owner (which approval shall not be withheld unreasonably).

5. Termination for Underutilization.

5.1 If, for any consecutive three (3) month period during the term of this Agreement, the Utilization of the Units in such period is less than Minimum Utilization, then within thirty (30) days after the determination of the Utilization of the Units for such period, the Railroad may pay to the Owner an amount equal to the difference between (x) the rental pursuant to Paragraph 6.1 hereof which would have been paid or payable to the Owner by the Railroad with respect to such period had the Utilization of the Units equaled Minimum Utilization, and (y) the rental pursuant to Paragraph 6.1 hereof actually paid or payable with respect to such period. If the Railroad shall not make the optional payment in accordance with the immediately preceding sentence, then the Owner may terminate this Agreement as to all or such lesser number of Units as the Owner shall determine on ten (10) days prior written notice to the Railroad

(it being understood that such termination pursuant to this Paragraph 5.1 shall not be construed as an Event of Default pursuant to Paragraph 13.1 hereof.) In the event of termination of this Agreement with respect to any Units pursuant to this Paragraph 5.1 hereof and if at the time of such termination the Units are not in assigned service of the type contemplated by Paragraphs 4.2 and 15.2 hereof, then any Incentive Fees (as hereinafter defined) thereafter payable to the Railroad with respect to such Units pursuant to Paragraph 7.2 hereof shall not be paid to the Railroad but shall be retained permanently by the Owner.

6. Rental.

6.1 As rental for the Equipment subject to this Agreement, all payments (except those arising in respect of a Casualty Occurrence) received by the Railroad from other railroads or from any other party for use of or relating to the Units including, without limitation, mileage charges, straight car hire payments under then applicable ICC and/or AAR Car Hire provisions (hereinafter called "Per Diem"), penalties (including, without limitation, demurrage) and incentive car hire payments, if any, under then applicable ICC and/or AAR Car Hire provisions (hereinafter called "Incentive Per Diem") promptly shall be paid by the Railroad to the Owner not later than the Fifth (5th) business day after the receipt thereof by the Railroad, together with an accounting thereof as soon as practical thereafter.

6.2 In the event that the rate structure for Per Diem, Incentive Per Diem, and mileage payments promulgated by the ICC and/or AAR are reduced or eliminated at any time during the term of this Agreement so that the rental payable to the Owner pursuant to Paragraph 6.1 hereof after such reduction would be less than the rental payable immediately before such reduction, then Minimum Utilization shall be increased to the lesser of (i) Ninety-Two and One-Half Percent (92.5%) or (ii) that percentage which results in an amount of rental after such rate reduction equal to the rental which would have been payable prior to such rate reduction; provided, however, that if the aforesaid adjustment results in Minimum Utilization being adjusted to Ninety-Two and One-Half percent (92.5%), then the Owner shall have the right to terminate this Agreement by giving the Railroad written notice of such termination, which notice shall be effective immediately.

6.3 The Railroad shall use its best efforts to collect from all other railroads over whose tracks the Units travel and from any other party or parties using the Units any and all sums which may be due from time to time from such other railroads, party or parties with respect to the Units including, without limitation, mileage charges, payments for damage to the Units and indemnity payments (if any), Per Diem and Incentive Per Diem.

6.4 If any rental payment is due on other than a business day, such rental shall then be payable on the next succeeding business day, and no interest shall be payable for the period from and after the nominal date for payment thereof to such next succeeding business day.

6.5 In the event of the taking or requisitioning by condemnation of any Unit resulting in loss of the use of such Unit by the Railroad as contemplated hereunder, all payments received by the Railroad from the requisitioning authority with respect to such Unit promptly shall be paid over to the Owner as additional rental hereunder and the Railroad shall have no interest in or right to any such amounts.

7. Railroad's Fees.

7.1 In addition to reimbursement for expenses incurred by the Railroad for maintenance, insurance, taxes or other purposes as otherwise provided herein, which expenses shall be reimbursed only to the extent expressly set forth herein, the Railroad shall be paid by the Owner a fee of Fifty Dollars (\$50) per Unit per calendar quarter commencing with the first full calendar quarter after all Units delivered and accepted hereunder shall have been loaded and placed in revenue producing service. Such fee (i) shall be payable in arrears on the last day of each December, March, June and September during the term hereof commencing September 30, 1980, (ii) shall be increased to Sixty Dollars (\$60) per Unit per calendar quarter commencing with the quarterly payment made September 30, 1985, and (iii) shall be increased further to Seventy Dollars (\$70) per Unit per calendar quarter commencing with the quarterly payment made September 30, 1990.

7.2 Following the end of each calendar year, commencing with the year ending December 31, 1980, the Owner shall (a) determine the incentive fees (herein called "Incentive Fees") payable to the Railroad if applicable in accordance with this paragraph, and (b) provide the Railroad with a complete copy of the calculations and related information which are the basis for such determination which calculations and information the Railroad shall have the right to verify or otherwise audit. If, with respect to the period commencing with the Delivery Date of the first Unit and ending on December 31, 1980, or with respect to any calendar year thereafter during the term of this Agreement, (i) the rental paid to the Owner pursuant to Paragraph 6.1 hereof exceeds (ii) the rental which would have been paid to the Owner pursuant to Paragraph 6.1 hereof if the Utilization of the Units with respect to such period had equaled Minimum Utilization, then an Incentive Fee shall be payable by the Owner to the Railroad with respect to such period equal to the amount of such excess. All Incentive Fees shall be determined as soon as practicable after the end of each calendar year, commencing with the

year ending December 31, 1980, during the term of this Agreement, but no later than February 1 of each calendar year, and shall be paid by the Owner in four equal quarterly installments on the last day of March, June, September and December of the year following the year for which such Incentive Fees were earned.

8. Identification Marks.

8.1 Prior to the Delivery Date for any Unit, the Owner will cause each Unit to be

(i) lettered with the names, initials or other insignia specified by the Railroad and customarily used by the Railroad or its affiliates on railroad equipment used by them of the same or similar type for convenience of identification of their rights to use the Units as permitted under this Agreement;

(ii) numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not therein listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Unit; and

(iii) marked with the name of the Owner (or the Purchasers, if any) and/or any other information specified by the Owner or any secured party to which the Owner (or the Purchasers, if any) may have granted a security interest in such unit in order to protect the Owner's title and the rights of such secured party, if any, in and to such Unit.

8.2 The Railroad will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not therein listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Unit, and will cause each Unit to be kept marked with the name of the Owner (or the Purchasers, if any) and any other information specified from time to time by the Owner or any secured party to which the Owner (or the Purchasers, if any) may have granted a security interest in the Units in order to protect the Owner's (or the Purchasers, if any) title and the rights of such secured party, if any, in and to such Unit. The Railroad will replace promptly any such numbers, markings, names and words which may be removed, defaced or destroyed. The Railroad will not change the identifying number of any Unit unless and until (i) a statement of a new number or numbers to be substituted therefor shall have been filed with the Owner and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited including, without limitation, the ICC, Official Railway Equipment Register

and the Universal Machine Language Equipment Register, and (ii) the Railroad shall have furnished to the Owner an opinion of counsel to the effect set forth in clause (iv)(B) of Paragraph 26.1 hereof in respect of such statement; provided, however, that the Owner shall reimburse the Railroad for all expenses incurred by the Railroad in changing the identifying number of any Unit if such change is made at the request of the Owner.

8.3 Except as above provided, the Railroad will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

9. Taxes.

9.1 The term "Impositions" shall mean all use, personal property, leasing, leasing use, or other taxes, levies, imposts, duties, charges or withholding of any nature, together with any penalties, fines or interest thereon except taxes on or measured by net income of the Railroad or the Owner.

9.2 The Railroad shall pay and discharge all Impositions imposed against the Railroad, the Owner (or the Purchasers, if any) or the Equipment by any federal, state or local government or taxing authority upon or with respect to the Equipment or upon the purchase or ownership thereof or in connection herewith except any sales tax imposed upon the Owner (or the Purchasers, if any) by any taxing authority in connection with the purchase of the Equipment from the Builder unless, and only to the extent that, any such Imposition is being contested by the Railroad or the Owner in good faith and by appropriate legal proceedings and the non-payment thereof does not, in the reasonable opinion of the Owner, adversely affect the title, property or rights of the Owner (or the Purchasers, if any) to or in the Equipment.

9.3 The Owner shall reimburse the Railroad for all Impositions paid by the Railroad; provided, however, the Owner shall offset from all Incentive Fees thereafter payable to the Railroad pursuant to Paragraph 7.2 hereof, the amounts of all Impositions reimbursed, reimburseable, paid or payable by the Owner hereunder exceeding \$65 per Unit within any twelve month period during the term of this Agreement, such \$65 amount to be increased by \$3.25 on June 30 of each year during the term of this Agreement commencing June 30, 1981.

9.4 The Railroad shall comply with all federal, state and local laws concerning the preparation and filing of tax returns with respect to the Equipment and shall provide copies of such returns to the Owner. The Railroad shall not make any representation or take any position in any relevant tax return which (a) conflicts with the Owner's ability to claim any tax deduction, credit or benefit including those contemplated in Paragraph 20.2 hereof, or (b) suggests in any manner that the Railroad has any ownership rights in or to any Unit.

9.5 In the event that any governmental agency assesses, or intends to assess, any tax, levy or other similar charge for which the Owner may be responsible, whether in whole or in part, the Railroad shall cooperate with the Owner and shall take no action or execute any agreement which may be inconsistent or conflict with the rights of the Owner (or the Purchasers, if any) as the same pertain thereto. Further, the Railroad acknowledges that the Owner, at its own expense, shall have the right to contest or appeal any such tax, levy, assessment or similar charges.

10. Reports and Records.

10.1 The Railroad shall furnish or cause to be furnished to the Owner, at the Railroad's expense, during the term of this Agreement the following:

(a) Within 15 days of the last day of each month, a report of the activity of the Units for such preceding month which report will summarize with respect to each Unit for such month (i) all amounts earned; (ii) all amounts received and deposited to or for the Owner's account; (iii) all amounts outstanding with respect to prior months with explanations for such overdue amounts; (iv) all maintenance expenditures; (v) all Incentive Fees paid to the Railroad; (vi) other expenditures; and (vii) casualty occurrences.

(b) Within 30 days of the end of each calendar year during the term of this Agreement, a statement to the best of the Railroad's knowledge signed by an executive officer of the Railroad (i) setting forth as of the preceding December 31 the amount, description and numbers of all Units then subject to this Agreement, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year, or are then undergoing repairs (other than running repairs), and such other information regarding the condition and state of repair of the Units as the Owner may reasonably request; (ii) stating that, in the case of all Units repaired or repainted during the period covered by such statement, the numbers and markings required by this Agreement have been preserved or replaced; (iii) certifying that all amounts payable hereunder by the Railroad to the Owner through the preceding December 31 have been paid, or if any have not been paid, identifying such unpaid amounts and the reason for their non-payment; (iv) stating that the Railroad has observed and performed, or caused to be performed on its behalf, each and every covenant and agreement of the Railroad required to be so observed or performed pursuant to this Agreement or if any have not been observed and performed, identifying such covenant or agreement and the reason for their nonperformance

or nonobservance; (v) stating that all amounts required to be paid by the Owner under this Agreement have been paid, or if any have not been paid, identifying such unpaid amounts and the reason for their nonpayment, if known; and (vi) stating that the Units have been operated in compliance with all laws and requirements of any regulatory authorities having jurisdiction over the Units.

(c) Immediately upon becoming aware of the happening or occurrence of any of the following, notice to the best of the Railroad's knowledge of: (i) any claim which the Owner has against the Builder in accordance with the warranty provisions of the Purchase Agreement; (ii) the occurrence of any event which would cause any Unit to be taken out of regular service; (iii) the occurrence of any event of default or event which, with the passage of time or the giving of notice, or both, would be an Event of Default; (iv) the imposition of any rules or regulations by any regulatory authority having jurisdiction over the Units which may have a material impact on the Owner's revenue or expense relative to the Units; (v) the making or assertion of any lien, claim, or security interest in or against any of the Units.

(d) As soon as available but in any event not later than April 30 of each year, a duplicate original of the annual report filed by the Railroad with the ICC or any governmental authority succeeding to all or a part of the functions thereof.

(e) During any period when the Railroad shall not be required to file annual reports containing its financial statements with the ICC or any successor governmental authority, as soon as available but in any event not later than 120 days after the close of each fiscal year of the Railroad, a report containing such financial and other information regarding the Railroad for such fiscal year as is set forth in the annual report filed by the Railroad with the ICC for the year ended December 31, 1979 and referred to in Paragraph 18.1(e) hereof.

(f) Promptly, such other reports, records, certificates or information with respect to the Units or this Agreement as the Owner may from time to time may reasonably request.

10.2 At no cost to the Owner, the Railroad shall prepare and deliver to the Owner at least five (5) days prior to the required date of filing (or, to the extent permissible, file on behalf of the Owner or the Purchasers, if any) any and all reports (other than tax returns) relating to maintenance, registration, recordkeeping and operation of the Equipment to be filed by the Owner (or the Purchasers, if any) with any federal,

state, industry or other regulatory authority by reason of the ownership by the Owner (or the Purchasers, if any) of the Units or the leasing thereof to the Railroad. Such documents shall include, but are not limited to, (i) documents relating to the Units required (or permitted, if requested by the Owner) to be filed with the AAR including, if requested by the Owner, an application for relief from AAR Car Service Rules 1 and 2; (ii) registration with the ICC; (iii) registration in the Official Railway Equipment Register and in the Universal Machine Language Equipment Register; and any and all reports which may be required from time to time by any governmental agency with jurisdiction over the Owner or the Equipment.

10.3 The Railroad shall perform all record keeping functions relating to use of the Equipment and shall maintain records and copies of correspondence, if any, relating thereto whether such use is by the Railroad or other railroads, all in accordance with AAR Railroad Interchange Agreements and Rules. Such records shall include, but not be limited to, car hire reconciliations.

10.4 All correspondence and records maintained hereunder, including all records of payments received in connection with the use of the Equipment, amounts expended in connection with the maintenance of the Equipment, or charges and correspondence relating to the Equipment shall be separately recorded and maintained by the Railroad in a form suitable for reasonable inspection and copying by the Owner from time to time during the Railroad's regular business hours. The Railroad shall supply the Owner with such reports regarding use and movement of the Units on its railroad line as the Owner may reasonably request.

10.5 The Owner promptly shall furnish or cause to be furnished to the Railroad, at the Owner's expense, during the term of this Agreement, such reports, records, calculations or information within the possession of the Owner or its agents with respect to the Units or this Agreement as the Railroad from time to time may reasonably request.

11. DISCLAIMER OF WARRANTIES AND COMPLIANCE WITH LAWS AND RULES.

11.1 THE OWNER MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN THE UNITS DELIVERED TO THE RAILROAD HEREUNDER, AND THE OWNER MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR ANY COMPONENT THEREOF, NOR SHALL THE OWNER BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING STRICT LIABILITY IN TORT), it being agreed that all such risks as between the Owner and the Railroad are to be borne by the Railroad.

11.2 The Railroad and the Owner agree to cooperate with and assist each other in connection with the assertion and enforcement of any claim or right which may exist against the Builder under the warranty provisions of the Purchase Agreement. The Railroad may (but shall not be obligated to) assert and enforce for itself and/or as agent for the Owner (or the Purchasers, if any) as their respective interests may appear, any such claim or right which may exist from time to time unless and until the Owner advises the Railroad of its intention to assert and enforce such claim or right in which the Owner (or the Purchasers, if any) have an interest; provided, however, the Railroad shall not compromise, settle or otherwise enter into any agreement with the Builder with respect to any claim or right arising under the Purchase Agreement in which the Owner (or the Purchasers, if any) have an interest without the concurrent approval of the Owner (and the Purchasers, if any).

11.3 The Railroad agrees, for the benefit of the Owner, (and the Purchasers, if any) to comply in all respects to the best of its knowledge (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which it operates, with the interchange rules of the AAR and with all rules of the DOT, the ICC and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Unit, the Railroad will conform therewith; provided, however, that the Railroad or the Owner may, in good faith, contest, at the expense of the contesting party, the validity or application of any such law or rule in any reasonable manner which does not adversely affect the property or rights of the Owner (or the Purchasers, if any) and does not result in a Unit being removed from the regular interline interchange service contemplated hereby; and provided further that no such alterations, modifications or replacement of parts shall be made without the prior authorization of the Owner unless made by a railroad other than the Railroad without the prior approval of the Railroad. Title to any such alteration, replacement or addition of or to any part on any Unit shall be and remain with the Owner (or the Purchasers, if any).

12. Maintenance of Equipment.

12.1 The Railroad shall inspect all Units interchanged to it to insure that such Units are in good working order and condition; and the Railroad shall be responsible to the Owner, without right of reimbursement from the Owner, for all repairs required for damage to any Unit while on the lines of the Rail-

road and not properly noted at the time of interchange of such Unit to the Railroad. The Railroad shall at all times, subject to the rights of the Owner hereinafter set forth in this Section 12, keep the Equipment in good repair and efficient condition and working order, eligible for interchange with other railroads pursuant to AAR Interchange Standards. The Railroad shall supply all parts, services and other items required in the operation and maintenance of the Equipment. All parts, replacements, substitutions and additions to or for any Unit shall immediately become Equipment and the property of the Owner. Charges to the Owner by the Railroad for all repairs, maintenance and servicing performed by the Railroad pursuant to the provisions hereof shall be in an amount equal to the actual cost of materials and direct labor (and charges, if any, by other railroads) incurred by the Railroad in effecting such repairs, maintenance and servicing; but in no event shall such charges exceed AAR Standard Rates as in effect at the time of such repairs, maintenance or service, or such other rules which supersede or replace AAR Standard Rates.

12.2 The Owner will reimburse the Railroad for all out-of-pocket costs, expenses, fees and charges incurred in connection with repairing, maintaining and servicing the Units, unless any such repairs, maintenance or servicing was (or were) (i) occasioned by the sole negligence or misconduct of the Railroad or any of the Railroad's agents or employees or (ii) would be deemed a "handling line responsibility" pursuant to Rule 96 of the AAR Field Manual as in effect at the time, or such other rule which supersedes or replaces such provision.

12.3 Anything herein to the contrary notwithstanding, (a) the Owner shall have the right to require that any or all repairs, maintenance and/or servicing on any or all of the Units be performed by one or more other persons or railroads able to do such work if the Owner determines that such work can be done by others at more favorable rates, in which event the costs of transporting the Equipment to and from such other persons or railroads shall be borne by the Owner, and (b) no item of maintenance or repair (other than running repairs) having a cost in excess of \$500 with respect to any Unit shall be performed without the prior approval of the Owner which approval shall be deemed to have been given unless the Owner notifies the Railroad to the contrary within five (5) days after receiving notice thereof. If the Owner refuses to approve any proposed item of maintenance or repair hereunder, the Owner thereafter shall hold the Railroad harmless from any loss or damage incurred by the Railroad as a result of the nonperformance of such item of maintenance or repair.

13. Default.

13.1 If, during the continuance of this Agreement, one or more of the following events (each such event being herein sometimes called an "Event of Default") shall occur and be continuing:

- A. Default shall be made in the payment by the Railroad of any rental required to be paid or remitted pursuant to Paragraphs 6.1 or 6.5 hereof when such payment is due;
- B. Default shall be made in the payment by the Railroad of any sum (other than rental required to be paid or remitted pursuant to Paragraphs 6.1 or 6.5 hereof) required to be paid or remitted hereunder, and such failure continues for five (5) days after written notice thereof from the Owner to the Railroad;
- C. Any representation or warranty made by the Railroad in this Agreement is untrue in any material respect, or any statement, report, schedule, notice or other writing furnished by the Railroad to the Owner in connection herewith is untrue in any material respect on the date as of which the facts set forth are stated or certified;
- D. Default shall be made in the observance or performance of any other covenant, condition or agreement on the part of the Railroad contained herein, and such failure continues for thirty (30) days after written notice thereof from the Owner to the Railroad;
- E. Any act of insolvency by the Railroad, or the filing by the Railroad of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors;
- F. The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against the Railroad that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of the Railroad, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment;
- G. Any action by the Railroad to discontinue rail service on all or a portion of its tracks or abandon any of its rail properties pursuant to applicable provisions of the ICC or the laws of any state;
- H. The subjection of any property of the Railroad to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency;

then, in any such case, the Owner, at its option may:

(a) Proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Railroad of the applicable covenants of this Agreement (and the Railroad agrees to bear the Owner's costs and expenses, including reasonable attorneys' fees, in securing such enforcement) or to recover damages for the breach thereof; or

(b) By notice in writing to the Railroad terminate this Agreement, whereupon all rights of the Railroad to use of the Units shall absolutely cease and terminate as though this Agreement had never been made, (but the Railroad shall remain liable as hereinafter provided); and thereupon, the Owner by its agents may enter upon the premises of the Railroad or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Railroad, or its successors or assigns, to use the Units for any purposes whatever but the Owner shall, nevertheless, have a right to recover from the Railroad any and all amounts which under the terms of this Agreement may be then due or which may have accrued to the date of or subsequent to the date of such termination and also to recover forthwith from the Railroad (i) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Owner shall have sustained by reason of the breach of any covenant, representation or warranty of this Agreement, and (ii) all costs and expenses incurred in searching for, taking, removing, keeping and storing such Units.

13.2 The remedies afforded the Owner under this Agreement shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Railroad agrees not to assert any existing or future claims to any offset against the rental or any other payments due the Owner hereunder and agrees to make such rental payments and all other payments regardless of any offset or claim which may be asserted by the Railroad or on its behalf.

13.3 The failure of the Owner to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

14. Return of Units Upon Default.

14.1 If an Event of Default shall occur and be continuing, the Owner may take or cause to be taken from the Railroad immediate possession of the Equipment, or one or more of the Units thereof, and may remove the same from possession and use of the Railroad. For such purpose, the Owner may enter upon the premises of the Railroad or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids, available trackage and other facilities or means of the Railroad, with or without process of law.

14.2 In the event the Owner shall demand possession of the Equipment pursuant to this Section 14 and shall designate a reasonable location or locations on the lines or premises of the Railroad or points at which the lines of the Railroad interconnect with the lines of any other railroad for the delivery of Equipment to the Owner, the Railroad shall, at its own cost, expense and risk, forthwith and in the usual manner, cause the Equipment to be moved to such location or locations on the Railroad's lines or interchange point or points and shall there deliver the Equipment or cause it to be delivered to the Owner without the right to any reimbursement (except as hereinafter specifically provided to the contrary), and obliterate any insignia or other identifying markings or lettering it has theretofore placed on the Equipment and restore the exterior to its original appearance, wear and tear otherwise hereunder permitted being excepted. At the option of the Owner and without altering the obligation of the Railroad to obliterate any insignia or markings and restore the Equipment to its original appearance, the Owner may keep the Equipment on any of the lines or premises of the Railroad until the Owner shall have leased, sold or otherwise disposed of the same (whether by public or private sale or otherwise), and for such purpose, the Railroad agrees to furnish, without storage or other charge, the necessary facilities at any point or points selected by the Owner reasonably convenient to the Railroad. During any storage period, the Railroad will permit the Owner or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of any such Unit, to inspect the same. Without in any way limiting the obligation of the Railroad under the foregoing provisions of this Section 14, the Railroad hereby irrevocably appoints the Owner, as agent and attorney of the Railroad with full power and authority, including the power of substitution, at any time while the Railroad is obligated to deliver possession of any Unit to the Owner, to demand and take possession of such Unit in the name and on behalf of the Railroad from whomsoever shall be in possession of such Unit at the time. The agreement to deliver the Equipment and furnish facilities as hereinbefore provided is essential to this Agreement, and upon

application to any court of equity having jurisdiction in the premises, the Owner shall be entitled to a decree against the Railroad requiring specific performance hereof.

15. Possession and Use, Assignment, Merger of the Railroad.

15.1 So long as the Railroad shall not be in default under this Agreement, the Railroad shall be entitled to the possession, use and quiet enjoyment of the Units upon railroads in the usual interline interchange of railway traffic in the manner and to the extent that railroad equipment similar to the Units is customarily used in the railroad freight business, but only upon and subject to all the terms and conditions of this Agreement; provided, however, that the Railroad (i) shall not assign or permit the assignment of any Unit to service involving the regular operations and maintenance thereof outside the continental United States or permit any Unit to be outside the continental United States for more than Fifty Percent (50%) of any calendar year, (ii) shall not at any time permit more than Ten Percent (10%) of the Units to be located outside the continental United States, and (iii) shall retain on its lines no more Units than are necessary to fulfill its immediate requirements to provide transportation and facilities upon reasonable request therefore to shippers on its lines. Without the prior written consent of the Owner, the Railroad shall not assign or transfer its interest under this Agreement or in or to the Equipment except as herein specifically provided to the contrary. No assignment, lease or interchange entered into by the Railroad hereunder shall relieve the Railroad of any liability or obligations hereunder, which shall be and remain those of a principal and not a surety.

15.2 The Owner hereby acknowledges notice of and consents to the Railroad placing the Units in assigned service to the Denver and Rio Grande Western Railroad Co. pursuant to Letter Agreements dated February 15, 1980 and April 16, 1980. Without the prior consent of the Owner, the Railroad shall not terminate such assignment of the Units.

15.3 Nothing in this Section 15 shall be deemed to restrict the right of the Railroad to assign or transfer its rights and interest under this Agreement in the Equipment or possession of the Equipment to any corporation (which shall have expressly assumed in writing the due and punctual payment and performance of all obligations hereunder of the Railroad) into or with which the Railroad shall have become merged or consolidated or which shall have acquired the property of the Railroad as an entirety or substantially as an entirety; provided, however, the corporation into or with which the Railroad shall have become merged or consolidated or which shall have acquired the property of the Railroad as an entirety or substantially as an entirety

after such merger or acquisition, shall have a net worth equal to or exceeding the net worth of the Railroad immediately prior to such merger or acquisition; and further provided, in the event of any such assignment or transfer, all amounts payable by the Railroad to the Owner hereunder shall be calculated and paid as if such assignment or transfer had not occurred.

15.4 The Railroad shall not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Units or any interest therein or in this Agreement and the Railroad promptly, at its own expense, shall take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time, except such mortgage, pledge, lien, charge, encumbrance, or other security interest or claim created by the Owner or to which the Owner shall consent.

15.5 Notwithstanding any provision of this Agreement to the contrary, the Railroad agrees and acknowledges that its rights in and to the Units are and shall be subject and subordinate to the rights of the Owner (and the Purchasers, if any) and any secured party to which the Owner (or the Purchasers, if any) may grant a security interest in any of the Units pursuant to a financing agreement entered into between the Owner (or the Purchasers, if any) and such secured party. Upon request of the Owner, the Railroad will confirm in writing the subordination of its rights hereunder to the lien or security interest resulting from any such financing agreement entered into by the Owner, (or the Purchasers, if any) now or hereafter in force against the Units. The Railroad agrees to execute such other instruments and take such other action from time to time as may be required in furtherance of any such financing agreement entered into by the Owner (or the Purchasers, if any) in order to further confirm such secured party's rights and interests in and to the Units and this Agreement, and to further confirm the subordination provisions set forth herein.

15.6 Without the prior consent of the Owner, the Railroad will not change the mechanical designation of any Units from that of "XP Boxcars".

15.7 At any time after the expiration of the seventh (7th) year of the Initial Term the Owner shall have the right, at its own expense, to substitute for one or more of the Units one or more railroad boxcars of a similar configuration, age, classification, condition and use and which have then applicable warranty provisions from the manufacturer thereof that are substantially similar to the Builder's warranty provisions applicable to the Units at the time of such substitution. Any out-of-pocket

expenses incurred by the Railroad in accepting, marking and placing such substituted boxcars into service, and returning the Units shall be reimbursed by the Owner. Any boxcars which are substituted for a Unit shall thereafter be classified as "Units" for purposes of this Agreement.

16. Assignment by the Owner.

16.1 The Owner (and any direct or remote assignee of the Owner) shall have the right at any time, and from time to time, to assign, sell or transfer part or all of its right, title and interest in and to this Agreement to any third party(ies), but the Railroad shall be under no obligation to any assignee except upon receipt of written notice of such assignment from the Owner. No assignment by the Owner of its right, title and interest in and to this Agreement shall release the Owner from any of its obligations hereunder unless (a) such obligations shall be assumed expressly by such assignee in writing in form satisfactory to the Railroad, and (b) the Railroad, in its good faith commercial judgment, shall have determined that such assignee has a financial net worth equal to or greater than the Owner at the time of such assignment. Such assignment shall not enlarge the obligations of the Railroad beyond those set forth in this Agreement.

16.2 In the event of any assignment, sale or transfer of Owner's right, title and interest in and to this Agreement (a) upon notice by the Owner the Railroad will make all payments of amounts due hereunder directly to the assignee; (b) the Railroad's obligations hereunder, including, without limitation, its obligation to make the rental payments described in Paragraph 6.1 hereof, shall not be subject to any reduction, abatement, defense, setoff, counterclaim or recoupment for any reason whatsoever; (c) the Railroad will not, after obtaining knowledge of any such assignment, consent to any modification of this Agreement without the consent of the Owner and such assignee; and (d) the Railroad will provide to the Owner and such assignee such certificates, statements or other information as the Owner or such assignee may reasonably request, including, without limitation, a certificate certifying the absence of any default or Event of Default hereunder, if such be the case.

16.3 All assignments by the Owner (as set forth in Paragraph 16.1 above) shall be effective upon the date of assignment, provided that Railroad's obligation(s) to any assignee shall be effective upon receipt of notice of the assignment from Owner or the assignee.

17. Return of Units Upon Expiration of Term.

17.1 As soon as practicable on or after the expiration (or earlier termination pursuant to Section 5, or to the extent

not inconsistent with Section 13 or 14, pursuant to Section 13 or 14) of the term of this Agreement with respect to any Unit, the Railroad shall deliver possession of such Unit to the Owner upon such storage tracks of the Railroad or to such interchange point or points of the Railroad as the Owner reasonably may designate, provided, however, that such storage on the Railroad's storage tracks does not interfere with the operations of the Railroad. The Railroad will permit the Owner to store such Unit on such tracks without storage or other charge, for a period not exceeding six (6) months after delivery of possession to the Owner hereunder and transport the same, at any time within such six (6) month period, to any reasonable place on the lines operated by the Railroad, or to any connecting carrier for shipment, all as directed by the Owner, such movement and storage of any such Unit on the storage tracks of the Railroad to be at the expense and risk of the Owner except as specifically provided above to the contrary. During said six (6) month storage period and at the expiration thereof, the Railroad agrees to transport the Units to any other reasonable place designated by the Owner, the movement of such Units to such places (other than to the places set forth in the immediately preceding sentence) to be at the expense and risk of the Owner. The Railroad shall remit to the Owner, promptly upon receipt thereof, any and all income of the type described in Paragraph 6.1 hereof earned during such movement, and the Railroad agrees to use its best efforts to realize all such revenues during such movement. During any storage period provided herein, the Railroad will permit the Owner or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of such Units, to inspect the same; provided, however, that the Railroad shall not be liable, except in the case of negligence of the Railroad or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Owner or any prospective purchaser or lessee, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Agreement, and upon application to any court of equity having jurisdiction in the premises, the Owner shall be entitled to a decree against the Railroad requiring specific performance hereof.

17.2 Each Unit returned to the Owner pursuant to this Section 17 shall (i) be in the same operating order, repair and condition as when originally delivered to the Railroad, reasonable wear and tear excepted, and (ii) meet the standards then in effect under the Interchange Rules of the AAR and/or the applicable rules of any governmental agency or other organization with jurisdiction over use of such Units in regular railroad interchange service, and if so requested by the Owner, the Railroad

shall obliterate any insignia or other identifying markings or lettering it has theretofore placed on the Equipment and restore the exterior to its original appearance, wear and tear otherwise hereunder permitted being excepted.

17.3 Promptly upon delivery of an invoice therefor from the Railroad, the Owner shall reimburse the Railroad for all out-of-pocket expenses incurred by the Railroad in delivering, obliterating any insignia or other markings on, or repairing or rehabilitating any of the Units pursuant to this Section 17. The Owner's obligations to so reimburse the Railroad shall survive the expiration (or earlier termination pursuant to Section 5) of this Agreement.

18. The Railroad's Warranties.

18.1 The Railroad represents and warrants that:

(a) The Railroad is a corporation duly organized and existing in good standing under the laws of the State of Maine.

(b) The Railroad is duly authorized to execute and deliver this Agreement, and is duly authorized to lease the Equipment and to perform its obligations hereunder.

(c) The execution and delivery of this Agreement by the Railroad, and the performance by the Railroad of its obligations hereunder, do not conflict with any provision of law or with the charter or bylaws of the Railroad or with any indenture, mortgage, deed of trust or agreement or instrument binding upon the Railroad or to which the Railroad is a party.

(d) The execution, delivery and performance of this Agreement by the Railroad and the consummation by the Railroad of the transactions contemplated hereby do not require the consent, approval or authorization of, or notice to, any federal, state or local governmental authority or public regulatory body.

(e) The Railroad's financial statement as of December 31, 1979, contained in its annual report to the ICC for the year ended December 31, 1979 (a copy of which report has been made available to the Owner) has been prepared in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding fiscal year and presents fairly the financial position of the Railroad as at the date thereof, and the results of its operations for the period then ended, and since such date there has not been any material adverse change in its financial position.

(f) This Agreement is a legal, valid and binding obligation of the Railroad, enforceable in accordance with its terms.

(g) Except as has been disclosed previously to the Owner in writing with respect to an Environmental Protection Agency compliance matter, there are not any pending or threatened actions or proceedings before any court or administrative agency which will to a material extent adversely affect the financial condition or continued operation of the Railroad and its subsidiaries on a consolidated basis or the ability of the Railroad to perform its obligations under this Agreement.

(h) The Railroad has during the years 1964-1968 neither built, leased nor purchased any new or rebuilt boxcars.

(i) To the best knowledge of the Railroad, there is no fact which the Railroad has not disclosed to the Owner nor, so far as the Railroad can now reasonably foresee, which will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of the Railroad or the ability of the Railroad to perform its obligations under this Agreement.

18.2 The Railroad shall be responsible to the Owner (and the Purchasers, if any) for the Units and liable for any loss relating thereto while any Unit is on the Railroad's tracks in the same manner and to the same extent that the Railroad is responsible under Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Service Rules - Freight for freight cars on the tracks of the Railroad which are not owned by the Railroad.

19. The Owner's Warranties.

19.1 The Owner represents and warrants that:

(a) The Owner is a corporation duly organized and existing in good standing under the laws of the State of Connecticut.

(b) The Owner is duly authorized to execute and deliver this Agreement and upon acceptance thereof on behalf of the Railroad, will be duly authorized to provide the Equipment to the Railroad and to perform its obligations hereunder.

(c) The execution and delivery of this Agreement and the performance by the Owner of its obligations hereunder do not conflict with any provision of law

or with the charter or by-laws of the Owner or with any indenture, mortgage, deed of trust or other agreement or instrument binding upon the Owner or to which the Owner is a party.

(d) The execution, delivery and performance of the Agreement by the Owner and the consummation by the Owner of the transactions contemplated hereby do not require the consent, approval or authorization of, or notice to, any federal, state or local governmental authority or public regulatory body, except as contemplated herein.

(e) This Agreement is a legal, valid and binding obligation of the Owner, enforceable in accordance with its terms.

(f) There are no pending or threatened actions or proceedings before any court or administrative agency which will to a material extent adversely affect the financial condition or continued operation of the Owner or the ability of the Owner to perform its obligations under this Agreement.

(g) To the best knowledge of the Owner, there is no fact which the Owner has not disclosed to the Railroad, nor, so far as the Owner can now reasonably foresee, which will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of the Owner or the ability of the Owner to perform its obligations under this Agreement.

20. Ownership of Equipment; Federal Income Taxes.

20.1 It is the intent of the parties to this Agreement that the Owner (or the Purchasers, if any) of the Units shall at all times be and remain the owner of such Units. The Railroad shall at no time take any action or file any instrument which is inconsistent with the foregoing intent. At the request of the Owner and/or any governmental agency having jurisdiction and/or any third party designated in writing by the Owner as having an interest in the Equipment, the Railroad will take such action legally permissible and execute such documents as may be necessary to accomplish or more fully evidence the foregoing intent.

20.2 The Owner (or the Purchasers, if any) of the Units shall be entitled to claim deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the "Code"), to an owner of property, including, without limitation: (a) the maximum depreciation deduction for any year (hereinafter called the "Depreciation Deduction") with respect to the Units authorized

under Section 167 of the Code, (b) deductions with respect to interest payable under any loan agreement between the Owner and any lender with respect to the Units pursuant to Section 163 of the Code (hereinafter called the "Interest Deduction"), and (c) investment tax credit with respect to the Equipment authorized pursuant to Sections 38 and 50 of the Code (hereinafter called the "ITC"). In furtherance of the foregoing, the Railroad shall maintain such records, execute such documents and take such other action as may be reasonably requested by the Owner to permit and assist Owner in claiming the Depreciation Deduction, Interest Deduction and ITC with respect to the Units and the Railroad shall take no action inconsistent with the foregoing intent. Nothing contained in this Section 20 shall (i) confer any rights upon the Owner of the Equipment or provide the Owner with tax benefits otherwise unavailable, or (ii) be construed as a representation, warranty, or indemnification to the Owner or by the Railroad of the availability of any tax benefit.

21. Insurance.

21.1 The Railroad shall cooperate with the Owner in obtaining such insurance on or with respect to the Units as the Owner shall seek to purchase, all at the Owner's expense.

21.2 The proceeds of any insurance received by the Owner on account of loss, damage or destruction to any Unit may, but are not required to, be used to acquire a replacement unit of railroad equipment similar to such Unit, which replacement unit may be delivered to the Railroad and, upon acceptance thereof, shall be subjected to this Agreement as if it were one of the original Units delivered hereunder.

22. Recording; Expenses.

22.1 Prior to the delivery and acceptance hereunder of any Unit, the Owner shall cause this Agreement to be filed and recorded with the ICC in accordance with 49 U.S.C. 11303 and will cause the Equipment to be duly registered in the Official Railway Equipment Register and the Universal Machine Language Equipment Register. The Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Owner for the purpose of proper protection, to the satisfaction of the Owner, of the Owner's title to the Equipment or for the purpose of carrying out the transactions contemplated by this Agreement. The Railroad will promptly furnish to the Owner evidences of all such filing, registering, recording, depositing, refiling, re-registering, rerecording and/or redepositing, and an opinion or opinions of counsel for the Railroad with respect thereto satisfactory to the Owner.

22.2 Promptly upon request therefor from the Railroad, the Owner shall reimburse the Railroad for all out-of-pocket expenses incurred by the Railroad in connection with the filing and recording of this Agreement, such other instruments and documents as are required to be prepared, filed, refiled, registered, reregistered, recorded, rerecorded, deposited or redeposited, and the reasonable fees of legal counsel incurred to comply with the provisions of this Section 22.

23. Interest on Overdue Payments.

23.1 Anything to the contrary herein contained notwithstanding, any non-payment of amounts and other obligations due either party hereto from the other party hereunder shall result in the obligation promptly to pay also, to the extent legally enforceable, interest on such overdue amounts for the period of time during which they are overdue at an annual interest rate equal to the Prime Rate of interest charged from time to time by Manufacturers Hanover Bank and Trust Company during such period or such lesser amount as may be legally enforceable.

24. Notices.

24.1 Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first class postage prepaid, addressed as follows:

if to the Owner:

Operating Lease Services, Inc.
47 Locust Hill Road
Darien, Connecticut 06820
Attention: President

with copies to:

Operating Lease Services, Inc.
c/o Gollust & Tierney, Inc.
30 Rockefeller Plaza
Suite 4510
New York, New York 10020
Attention: President

if to the Railroad:

Nevada Northern Railway Company
P.O. Box 16600
Salt Lake City, Utah 84116
Attention: William Melville

or addressed to any party at such other address as such party shall hereafter furnish to the other in writing.

25. Right to Perform.

25.1 If the Railroad fails to make any payments required by this Agreement, or to perform any of its other agreements contained herein, the Owner may, but shall not be required to, make any such payments or perform any such obligations. The amount of any such payments and the Owner's expenses, including, without limitation, reasonable legal fees incurred in connection therewith or with the performance of any such obligations, shall thereupon be and become payable by the Railroad to the Owner upon demand unless such expenses are of the type for which the Owner is required to reimburse the Railroad as herein elsewhere provided.

25.2 If the Owner (or the Purchasers, if any) fails to make any payment or perform any obligation required to be performed by the Owner (or the Purchasers, if any) hereunder or under any financing agreement entered into by the Owner (or the Purchasers, if any) with a secured party to which the Owner (or the Purchasers, if any) has granted a security interest in any of the Units, the effect of which nonpayment or nonperformance by the Owner is to jeopardize the continued use of the Units by the Railroad hereunder, then the Railroad may, but shall not be required to, make any such payments or perform any such obligations. The amount of any such payments and the Railroad's expenses, including, without limitation, reasonable legal fees incurred in connection therewith or with the performance of any such obligations, shall thereupon be and become payable to the Railroad by the Owner upon demand.

26. Conditions to Obligations.

26.1 The Owner shall not be obligated to deliver any Units to the Railroad for lease hereunder unless on or before, but no more than five (5) days before, the first Delivery Date of Units under this Agreement:

(i) All of the Railroad's representations and warranties in Section 18 of this Agreement shall be true and correct as though made as of such date;

(ii) No litigation or governmental proceedings shall be threatened or pending against the Railroad or any subsidiary which in the Owner's reasonable opinion will to a material extent adversely affect the ability of the Railroad to perform its obligations hereunder;

(iii) No Event of Default shall have occurred;

(iv) The Railroad shall have furnished to the Owner, in form and substance satisfactory to the Owner, the following on or prior to such date:

(A) Such instruments as the Owner reasonably shall request in order to evidence the authority of the Railroad to execute, deliver and perform this Agreement;

(B) A favorable opinion of counsel for the Railroad, addressed to the Owner and the Lender, dated such date, to the effect that:

(1) The Railroad is a corporation duly organized, validly existing and in good standing under the laws of the State of Maine;

(2) The Railroad has full power, authority and legal right to own its properties and to conduct its business as now conducted, and to execute, deliver and perform this Agreement;

(3) The Railroad is duly authorized to execute and deliver this Agreement, and is duly authorized to use the Equipment hereunder and to perform its obligations hereunder;

(4) The execution and delivery of this Agreement by the Railroad, and the performance by the Railroad of its obligations hereunder, do not and will not conflict with any provision of law or the charter or by-laws of the Railroad or any indenture, mortgage, deed of trust or agreement or instrument binding upon the Railroad or to which the Railroad is a party;

(5) The execution, delivery and performance of this Agreement by the Railroad and the consummation by the Railroad of the transactions contemplated hereby do not require the consent, approval or authorization of, or notice to, any federal or state governmental authority or public regulatory body or any other party (including the stockholders of the Railroad);

(6) This Agreement is a legal, valid and binding obligation of the Railroad enforceable in accordance with its terms (except as enforceability may be affected by bankruptcy, reorganization, insolvency or similar laws affecting the rights of creditors generally);

(7) There are not to the knowledge of such counsel any pending or threatened actions or proceedings before any court or administrative agency which will, in the opinion of such counsel, to a material extent adversely affect the financial condition or continued operation of the Railroad and its subsidiaries on a consolidated basis;

(v) The Owner shall have received a favorable opinion of counsel to the effect that this Agreement has been duly filed and recorded with the ICC pursuant to 49 U.S.C. 11303 and that such filing and recording will protect the Owner's interest in and to the Units, and that no future filing or recording (or giving of notice) with any other federal, state or local governmental agency is necessary in order to protect such interests in and to the Units and this Agreement.

26.2 The Railroad shall not be obligated to lease any Units hereunder unless on or before, but no more than five (5) days before, the first Delivery Date of Units under this Agreement:

(i) All of the Owner's representations and warranties in Section 19 of this Agreement shall be true and correct as though made as of such date;

(ii) No litigation or governmental proceedings shall be threatened or pending against the Owner or any subsidiary which in the Railroad's reasonable opinion will, to a material extent, adversely affect the ability of the Owner to perform its obligations hereunder;

(iii) The Owner shall have furnished to the Railroad in form and substance satisfactory to the Railroad such instruments as the Railroad reasonably shall request in order to evidence the authority of the Owner to execute, deliver, and perform this Agreement.

27. Severability; Effect and Modification of Agreement.

27.1 Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

27.2 This Agreement exclusively and completely states the rights of the Owner and the Railroad with respect to the Units and supersedes all other agreements, oral or written, with

respect thereto. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Owner and the Railroad.

28. Execution.

28.1 This Agreement may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but to the extent, if any, that this Agreement constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no security interest in this Agreement may be created through the transfer or possession of any counterpart other than the original counterpart which shall be so identified by the Owner on the signature page thereof and all other counterparts shall be deemed to be duplicates.

28.2 Although for convenience this Agreement is dated as of the date first above set forth, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

29. Law Governing.

29.1 The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. 11303 and such additional rights arising out of the filing, registering, recording or depositing hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, registered, recorded or deposited and any rights arising out of the marking on the Units.

30. Miscellaneous.

30.1 This Agreement, and the Schedules and Exhibits hereto, shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

30.2 It is expressly understood and agreed that this Agreement does not constitute or create a joint venture or partnership and the parties hereto agree to execute such other instruments and take such other actions as may be reasonably requested by either party hereto to evidence the foregoing intention.

30.3 The Index and Section headings set forth herein are for convenience of reference only and are not intended to modify, limit, describe or affect in any way the contents, scope, intent or interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this Agreement to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

WITNESS:

OPERATING LEASE SERVICES, INC.

Ridgely W. Brown

BY: Paul E. Terney Jr.

NEVADA NORTHERN RAILWAY COMPANY

Earl C. Terney

BY: K. H. Weatherford
President

THIS AGREEMENT HAS BEEN EXECUTED IN SEVERAL COUNTERPARTS. TO THE EXTENT, IF ANY, THAT THIS AGREEMENT CONSTITUTES CHATTEL PAPER (AS SUCH TERM IS DEFINED IN THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN ANY APPLICABLE JURISDICTION) NO SECURITY INTEREST IN THIS AGREEMENT MAY BE CREATED THROUGH THE TRANSFER OR POSSESSION OF ANY COUNTERPART OTHER THAN THE ORIGINAL COUNTERPART WHICH SHALL BE SO IDENTIFIED BY OPERATING LEASE SERVICES, INC. ON THE SIGNATURE PAGE HEREOF, AND ALL OTHER COUNTERPARTS SHALL BE DEEMED TO BE DUPLICATES.

SCHEDULE A

TO

LEASE AGREEMENT

Description of Equipment

<u>Specifications</u>	<u>Maximum Quantity</u>	<u>Road Numbers (Inclusive)</u>	<u>Unit</u>	<u>Builder's Base Price</u> <u>Aggregate</u>
100 Ton, 50'-6" XP Boxcars	35	NN 201-235	\$49,000	\$1,715,000

Delivery

May 1, 1980 to
July 31, 1980 at
Builder's Plant -
Renova, Pennsylvania

EXHIBIT A

TO

LEASE AGREEMENT

Certificate of Acceptance No. ____

Reference is made to (i) the Lease Agreement dated as of May 30, 1980 between Operating Lease Services, Inc. ("Owner") and Nevada Northern Railway Company ("Railroad"); and (ii) the Purchase Agreement between the Owner and Whittaker Corporation (Berwick Forge and Fabricating Division) ("Builder") referred to in the Lease Agreement; both relating to up to Thirty-Five (35) 100-ton XP Boxcars ("Units").

The undersigned hereby certifies that:

1. He is an agent the Owner duly authorized to receive delivery of, inspect and accept the Units on behalf of the Railroad and the Owner.

2. The Units whose Serial Numbers are listed below (i) have been delivered by the Builder, (ii) have been inspected by the undersigned, (iii) conform to the specifications for the Units referred to in the Purchase Agreement, and (iv) are marked in accordance with the requirements of Section 8 of the Lease Agreement.

The undersigned hereby accepts the Units whose Serial Numbers are listed below on behalf of the Railroad pursuant to the Lease Agreement.

Dated: _____ OPERATING LEASE SERVICES, INC.

BY: _____

Total Number of Units:

Serial Numbers of Units:

EXHIBIT B

TO

LEASE AGREEMENT

Three Examples of Determination of Utilization of the Units
Pursuant to Paragraph 4.1 of the Lease Agreement
(on a per Unit basis)

- Assume: 1. There are 90 days during the period for which the calculation is being made.
2. Each Unit earns revenue in the \$49,000 - \$51,000 car cost bracket and is less than five years old.
3. The Per Diem, Incentive Per Diem and Mileage rates in effect on May 9, 1980.

- A. Calculation of Denominator which is the same for all three (3) examples: Hypothetical sum of all rental received or receivable.

(i) Mileage: \$0.0638/mile x 115 miles	
x 90 days	= \$ 660.33
(ii) Per Diem: \$0.94/hour x 24 x 90 days	= 2,030.40
(iii) Incentive Per Diem:	= -0-
	<u>\$2,690.73</u>

- B. Calculation of Numerator: Sum of all rental actually received or receivable with respect to period.

Example 1: \$2,459.90

Example 2: \$2,261.42

Example 3: \$1,717.26

- C. Calculation of Utilization of the Units (fraction expressed as a percentage):

Example 1:

Numerator:	<u>\$2,459.90</u>	= 91.4%
Denominator:	<u>\$2,690.73</u>	

Example 2:

Numerator:	<u>\$2,261.42</u>	= 84.0%
Denominator:	<u>\$2,690.73</u>	